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8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 872-A

12 **PETE ESPINOSA**
13 **8110 S. Walnut Avenue**
14 **Fresno, Ca 93706**

A C C U S A T I O N

15 **Land Surveyor License No. L 6335**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
21 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
22 Department of Consumer Affairs.

23 2. On or about June 15, 1990, the Board for Professional Engineers and Land Surveyors
24 issued Land Surveyor License Number L 6335 to Pete Espinosa (Respondent). The Land
25 Surveyor License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on December 31, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

5. Section 8780 of the Code states:

The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon.

By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

....

(b) Any negligence or incompetence in his or her practice of land surveying.

....

(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.

(e) Any conviction of a crime substantially related to the qualifications, functions, and duties of a land surveyor. The record of the conviction shall be conclusive evidence thereof.

6. California Code of Regulations, title 16, section 404 states, in part:

For the purpose of the rules and regulations contained in this chapter, the following terms are defined. No definition contained herein authorizes the practice of professional engineering as defined in the Professional Engineers Act.

....

(n) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, "incompetence" as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor.

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1 7. Section 8762 of the Code states, in part:

2 (a) Except as provided in subdivision (b), after making a field survey in
3 conformity with the practice of land surveying, the licensed surveyor or licensed civil
4 engineer may file with the county surveyor in the county in which the field survey
5 was made, a record of the survey.

6 (b) Notwithstanding subdivision (a), after making a field survey in conformity
7 with the practice of land surveying, the licensed land surveyor or licensed civil
8 engineer shall file with the county surveyor in the county in which the field survey
9 was made a record of the survey relating to land boundaries or property lines, if the
10 field survey discloses any of the following:

11 (1) Material evidence or physical change, which in whole or in part does not
12 appear on any subdivision map, official map, or record of survey previously recorded
13 or properly filed in the office of the county recorder or county surveying department,
14 or map or survey record maintained by the Bureau of Land Management of the
15 United States.

16 (2) A material discrepancy with the information contained in any subdivision
17 map, official map, or record of survey previously recorded or filed in the office of the
18 county recorder or the county surveying department, or any map or survey record
19 maintained by the Bureau of Land Management of the United States. For purposes of
20 this subdivision, a "material discrepancy" is limited to a material discrepancy in the
21 position of points or lines, or in dimensions.

22

23 (4) The establishment of one or more points or lines not shown on any
24 subdivision map, official map, or record of survey, the positions of which are not
25 ascertainable from an inspection of the subdivision map, official map, or record of
26 survey.

27

28 (c) The record of survey required to be filed pursuant to this section shall be
filed within 90 days after the setting of boundary monuments during the performance
of a field survey or within 90 days after completion of a field survey, whichever
occurs first.

8. Section 8783 of the Code states:

 A plea or verdict of guilty or a conviction following a plea of nolo contendere
made to a charge substantially related to the qualifications, functions and duties of a
land surveyor is deemed to be a conviction within the meaning of this article. The
board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information or indictment.

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1 9. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to
4 suspend or revoke a license or otherwise take disciplinary action against a person who
5 holds a license, upon the ground that he applicant or the licensee has been convicted
6 of a crime substantially related to the qualifications, functions, and duties of the
7 licensee in question, the record of conviction of the crime shall be conclusive
8 evidence of the fact that the conviction occurred, but only of that fact, and the board
9 may inquire into the circumstances surrounding the commission of the crime in order
10 to fix the degree of discipline or to determine if the conviction is substantially related
11 to the qualifications, functions, and duties of the licensee in question.

12 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
13 'registration.'

14 10. Title 16, California Code of Regulations section 416 states:

15 For the purpose of denial, suspension, or revocation of the license of a
16 professional engineer or a land surveyor pursuant to Division 1.5 (commencing with
17 Section 475) of the Business and Professions Code, a crime or act shall be considered
18 substantially related to the qualifications, functions, and duties of a professional
19 engineer or land surveyor if, to a substantial degree, it evidences present or potential
20 unfitness of a professional engineer or land surveyor to perform the functions
21 authorized by his or her license in a manner consistent with the public health, safety,
22 or welfare. Such crimes or acts shall include, but not be limited to

23 **COST RECOVERY**

24 11. Section 125.3 of the Code provides, in pertinent part, that the board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case.

28 **FIRST CAUSE FOR DISCIPLINE**

(Incompetent Professional Performance)

1 12. Respondent is subject to disciplinary action under section 8780, subdivision (b) for
2 incompetence, as defined in California Code Regulations section 404, subdivision (n) in that
3 Respondent lacked the knowledge or ability to discharge his professional obligations as a land
4 surveyor when he failed to recognize his obligations. The circumstances are that in or about July
5 2003, Respondent prepared a map entitled "ALTA/ACSM Land Title Survey" showing the
6 physical features and certain parcel boundaries of land located in the City of Oroville, Butte
7 County, California for Lars Anderson and Associates, Inc., a Civil Engineering firm. The

1 beginning of the Surveyor's Certificate on the map signed by Respondent certifies that the survey
2 is based on field work and a survey of the land performed by Respondent. Subsequently,
3 Respondent did not record the survey because of his belief that his work and ALTA survey
4 preparation should not and did not constitute a field survey and thereby, did not require filing.
5 Respondent's lack of knowledge as to his obligations violates the following:

6 a. Section 8762, subdivision (b)(1), which requires that a land surveyor file a record of
7 survey with the county surveyor when he conducts a field survey that discloses material evidence
8 or physical change not appearing in any other filed or recorded map or survey in the office of the
9 county recorder, the county surveying department, or the Bureau of Land Management of the
10 United States. As more fully set forth in paragraphs 12(b) and (c) below, Respondent located
11 material discrepancies in the position of points, lines or dimensions and located points or lines
12 which did not appear on any previously recorded map or survey. As a result of these findings,
13 Respondent was required to record the field survey with the county surveyor, which he failed to
14 do.

15 b. Section 8762, subdivision (b)(2), which requires that a land surveyor file a record of
16 survey with the county surveyor when he conducts a field survey that discloses a material
17 discrepancy with the information contained in any other filed or recorded map or survey in the
18 office of the county recorder, the county surveying department, or the Bureau of Land
19 Management of the United States. Respondent's ALTA maps shows measurements taken that are
20 different from the record measurements (which are enclosed in parentheses on Respondent's
21 ALTA map). Respondent's map also shows that some of the existing survey boundary
22 monuments found during his field survey work are out of position according to his opinion and
23 method of boundary establishment. As a result of these discrepant findings, Respondent was
24 required to record the field survey with the county surveyor, which he failed to do.

25 c. Section 8762, subdivision (b)(4), which requires that a land surveyor file a record of
26 survey with the county surveyor when he conducts a field survey that establishes "one or more
27 points or lines not shown on any subdivision map, official map, or record of survey, the positions
28 of which are not ascertainable from an inspection of the subdivision map, official map, or record

1 of survey.” Here, portions of the property boundary established by Respondent were based on
2 descriptions in grant deeds that have never been shown on any previously filed or recorded map.
3 As a result of these new points and lines findings, Respondent was required to record the field
4 survey with the county surveyor, which he failed to do.

5 d. Section 8762, subdivision (c), which requires that a land surveyor file a record of
6 survey “within 90 days after the setting of boundary monuments during the performance of a field
7 survey or within 90 days after completion of a field survey, whichever occurs first.”

8 Respondent’s conduct and preparation of the ALTA map are descriptions of a field survey that
9 require filing. Respondent was required to record the field survey with the county surveyor
10 within in 90 days after its completion, which he failed to do.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Chapter Violations)**

13 13. Respondent is subject to disciplinary action under section 8780, subdivision (d) for
14 violating section 8762, subdivision (b)(1), (2), (4) and (c), as more fully set forth in paragraph 12
15 above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Criminal Conviction)**

18 14. Respondent is subject to disciplinary action under section 8780, subdivision (e) in
19 that Respondent was convicted of a crime substantially related to the qualifications, functions,
20 and duties of a land surveyor as defined in California Code of Regulations, Title 16, Section 416.
21 On or about August 20, 2008, in the criminal proceeding entitled *People v. Peter Espinosa* in
22 Fresno County Superior Court, Case Number F08901479, Respondent was convicted on his plea
23 of nolo contendere to violating Penal Code section 664/192, subdivision (a) (attempted voluntary
24 manslaughter), Penal Code section 422 (criminal threats), and Penal Code section 12022.5,
25 subdivision (a) (use of firearm during commission of crime), felonies. The circumstances are as
26 follows:

27 15. On or about March 2, 2008, Respondent was arrested for attempted murder,
28 threatening a crime with intent to terrorize, inflicting corporal injury on a spouse/cohabitant and

1 unlawfully carrying a concealed firearm. On the date of the incident, Respondent arrived at the
2 home of T.J-P, his former fiancé, to discuss their relationship. However, the discussion became
3 heated once T.J-P discovered that Respondent was drunk, and asked him to leave the property.
4 (Respondent and T.J-P had remained outside the home.) During the argument, Respondent
5 displayed a handgun, pointed it at his own head and threatened to kill himself if he could not be
6 with T.J-P.

7 Respondent then pointed the gun at T.J-P, threatened to kill her and began advancing upon
8 her. Respondent grabbed T.J-P by the throat, pushed her against a fence and pushed the barrel of
9 the gun against her head, continuing to threaten her life. T.J-P broke free from Respondent, but
10 Respondent reached out and slammed T.J-P back against the fence again. Respondent then fired
11 one round in the air, just 6 inches from T.J-P's head. He then pushed the gun against T.J-P's head
12 and yelled, "You're dead....I'm going to kill you." T.J-P began to struggle and as she grabbed
13 Respondent's hand to push the gun away, Respondent pulled the trigger. T.J-P turned her head,
14 pushed Respondent's hand away and avoided being shot. T.J-P and Respondent then struggled to
15 gain control of the gun. T.J-P was able to get the gun from Respondent and get away until the
16 police arrived.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Land Surveyor Number L 6335, issued to Pete Espinosa.
2. Ordering Pete Espinosa to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/17/10

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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